IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

F.A.O. No.51 of 2000

Judgment reserved on :17.3.2006

Date of decision:3.4.2006

Mandeep Kaur Appellant

Versus

Sukh Dev Singh Respondent

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? YES

For the appellant(s):Mr.Subhash Sharma, Advocate

For the respondent(s): Mr.Neeraj Gupta, Advocate

Deepak Gupta,J.

This appeal under Section 28 of the Hindu Marriage Act is directed against the judgment and decree dated 17.12.1999 passed by the learned District Judge, Mandi in H.M.Petition No. 27 of 1996 whereby the learned trial court has granted a decree of divorce in favour of the husband.

The brief facts relevant for the decision of the case are that the parties were married at Amritsar on 6.2.1994 according to Hindu rites. They last resided together in Mandi till December, 1995. Thereafter the wife went and resided with her parents at Amritsar. The husband instituted a petition for grant of divorce on 18.10.1996. The divorce was sought on the ground of

cruelty. The instances of cruelty detailed in the petition are as follows:-

(a) The wife on account of “Sukhna” undertaken before marriage was to go to Nanaksar in Ludhiana on every Purnima(full moon) for five months after the marriage. Though there was direct bus to Ludhiana from Mandi, but the wife would insist to go to Nanaksar via Amritsar and usually would stay back with her mother. The husband had to go after every 10 or 15 days to bring her back and thus the husband was forced for 5 to 6 days in a month to be absent from his business:

(b) The wife and her parents pressurized the husband to leave his parents and stay with them at Amritsar as Gharjawain with the promise that parents of the wife would give him ground floor of their residence for his business. On the refusal of the husband to succumb to this pressure the parents and the wife threatened to implicate him in a case of dowry demand;

(c) In January, 1996, in the absence of the husband, the wife alongwith the parents, brother, one Gurcharan Singh Randhawa came to the house of the husband, assaulted and beat the family members of the husband at Mandi regarding which a case under section 324, 452, 147, 148 I.P.C. was registered with police station Mandi;

(d) A false case to pressurize the husband and his family members was registered by the wife at Amritsar for the offences punishable under sections 498-A, 406 and 120-B I.P.c. against the husband his parents, brother and sister. The

husband and his father were even lodged in judicial custody for 5 days;

(e) The wife, when the husband was arrested at Mandi pursuant to the case under section 498-A, 406 and 120-B I.P.C. lodged at Amritsar, insisted on the handcuffing of the husband by the police;

(f) False complaints were made by the father of the wife to the Hon'ble Chief Minister and Hon'ble the Chief Justice of High Court of H.P. which caused undue harassment to the husband and his parents;

(g) Neglect of the household affair and misbehaviour of the wife with the husband and his parentsl;

(h) The husband was not informed about the birth of baby Sofia.

The wife contested the claim petition and set-up a plea that she had to leave the house of her husband and live with her parents due to ill treatment meted out to her by the husband and his family members and also on account of the fact that they always demanded dowry from her. According to the wife the husband and his family members always asked for money and pressurized her to get atleast Rs.5,00,000/- as dowry. She also stated that it was due to this reaon that she had lodged a complaint under Section 498-A, 406 and 120-B at Amritsar. She also states that earlier the husband had filed a false case against her family members at Mandi. The learned trial court held that the

husband had proved the fact that the wife had treated him with cruelty and granted divorce on this ground.

What is cruelty is a question which has been considered by various courts from time to time. The apex court in **Shobha Rani Vs. Madhukar Reddi AIR 1988 SC 121** held as follows:-

> "4. Section 13(1) (i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

5. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the Judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon Vs. Sheldon, (1966) 2 All ER 257 (259) “the categories of cruelty are not closed.” Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful/realm of cruelty.”

The apex court in **A.Jayachandra Vs. Aneel Kaur** (2005) 2 SCC 22 again considered what is meant by expression cruelty and held as follows:-

> "10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an interference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be

> mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes."

It is in the light of these observations of the apex court as to what is meant by the word "cruelty" that the evidence has to be scrutinized.

The learned trial court has scrutinized all the eight allegations levelled by the husband against the wife and has found majority of the allegations to be true and held that they amount to cruelty when taken together. While deciding the appeal I am not taking into consideration the allegations a, b, f, g and h since, in my view, these allegations per se may not amount to cruelty though the combined effect of them would amount to cruelty. The more important allegations are c, d and e. If these allegations are proved, then they by themself amount to cruelty and would entitle the husband to divorce. However, I must observe that there is material on record to show that the wife and her parents were pressurizing the husband to leave Mandi and settle down in Amritsar. This by itself would not amount to cruelty because it is the right of the in-laws also to guide

the son-in-law and in case he can have better avenue in life, there is nothing wrong with the in-laws suggesting that he should leave his home. However, if this is done only with an intention of making him leave his parents and this is combined with other misbehaviour, then the same may amount to cruelty.

The main allegation of the husband is that on 13th January, 1996 when he had gone to Amritsar the wife alongwith her parents, brother and one Gurcharan Singh Randhava came to their house at Mandi. They assaulted and beat the family members of the husband. A case under Section 324/452/147/148 I.P.C. was registered with police station, Mandi. The fact that the wife alongwith her parents, brother and Gurcharan Singh is not denied. The case set up by the wife is that she alongwith her family had come from Calcutta with a view to reconcile the matter and in fact the parents of the husband misbehaved with her and her parents and threw away the articles which they had brought. Sandeep Singh (PW-7) has stated that on 14th January, 1996 Mandeep Kaur alongwith her parents, Harbans Singh and Sandeep Kaur, brother Rony and Gurcharan Singh Randhawa came to their house and gave beating to them. They also threatened the family members of the husband. PW-2 Navdesh Singh is a neighbour of the husband. According to him 14.1.1996 which was a Sunday at about 9.00 p.m. when he was standing in the

balcony of his house he saw some persons standing below the house of Sukhdev Singh (husband). He also saw some articles lying there and some quarrel had taken place. He went inside the house of Sukhdev Singh and saw that in-laws of Sukh Dev were sitting inside the house. The husband's mother was crying while his father was sitting on his bed in a dishevelled state. There were injury marks on the neck of Sukhdev's brother. At that time Sukh Dev had gone to Amritsar on the occasion of Lohri to meet his sister.

Iqbal Singh (PW-3) has also made a similar statement. He has a shop adjacent to the shop of the father. According to him on 14.1.1996 when he heard a commotion in the neighbourhood, he went to the house of Sukh Dev. A large number of persons had collected there. The hair of Sardar Surjeet Singh (father of the husband) were disheveled. Many articles were lying helter-skelter. The condition of the mother and brother was also quite bad. When he asked Surjeet as to what has happened, he informed that the people who had come from Amritsar had beaten them. He also saw injury marks on the neck of the Bobby, brother of the husband.

As observed above, the wife has not denied the fact that she alongwith the aforesaid persons visited her mother-in-law's home on 14.1.1996. However, her version is that when she reached the house, her brother-

in-law asked her if she had brought the money and told them that they could not enter the house if she had not brought the money. She further states that they were not permitted to enter the house and all the articles brought by her parents including fruits were thrown out. Harbans Singh (RW-3) who is the father of the wife has also given a similar version as his daughter.

The version of the wife does not appear to be correct. Admittedly the wife had been residing with her parents since 1995. If she had come with an intention of reconciling with the husband then obviously before coming they would have first found out whether the husband is at Mandi or not. They would not have come for reconciliation without doing so. Another important aspect is that G.S.Randhawa who was stated to be with them at that time has not been examined by the wife. It is admitted by these persons that they are facing trial for an offence under Section 324/452/147/148 I.P.C. I have been informed at the bar that the persons have been acquitted. Even if the persons may have been acquitted, the fact that such an incident has happened when the family members of the wife in her presence have beaten up and threatened the family of the husband is, in my opinion, an act of cruelty by itself.

The next act of cruelty alleged by the husband is the registration of a false case under Section

498-A, 406 and 120-B I.P.C. alongwith the further allegation that when the husband was arrested at Mandi, the wife and her father insisted that he be handcuffed by the police. The wife does not dispute the fact such a case in fact was lodged against the husband, his father, his mother, his brother and his sister at police station B-Division, Amruitsar(Punjab). Copy of the FIR Ex.PW-4/A has been proved by PW-4 Nazar Singh, Constable. According to the allegations made in the FIR, within one month of the marriage, the husband and other family members had started pressurizing the wife to bring Rs.5,00,000/- in dowry. According to her this money was demanded for setting up a factory. When she refused to accept this demand, she was beaten up. According to the allegations made in the FIR her entire jewellery was taken into possession by her mother-in-law and she was told that in case she does not bring Rs.5,00,000/- her jewellery would be sold. According to the husband this case is totally false and was filed as a counter blast to the case filed by his family at Mandi. It is well settled law that if a false case is filed by one spouse against another, it would amount to cruelty. It is also equally true that mere launching of a criminal proceeding by one spouse against the other is not an act of cruelty unless these allegations are shown to be false. Even the acquittal of one party in a case would not mean that the allegations are false. In criminal proceedings the guilt

must be proved beyond reasonable doubt since a person has to be sentenced for imprisonment and suffers penal consequences. In civil proceedings, on the other hand, it is preponderance of evidence which is relevant.

At the outset it would be pertinent to notice that the FIR regarding demand of dowry was lodged with the police on 6.5.1996. There is no explanation as to why this FIR was not lodged immediately after the demand was made. Even if it be assumed that the wife was making some efforts for reconciliation then also there is no explanation from December, 1995 onwards when admittedly the wife left her matrimonial home to live with her parents. On 14th January, 1996 admittedly there was an altercation between the family of the husband on one side and the wife and her family on the other. An FIR in this regard was lodged by the husband's family on 15.1.1996. Even if the wife's version with regard to the incident is accepted, it is clear that she and her family members were not allowed to enter into her matrimonial home and the articles brought by them were thrown out on the ground that she should bring Rs.5,00,000/- as dowry. At this time at least the FIR should have been lodged. The FIR was lodged on 6.5.1996, almost 4 months after the incident.

Another aspect which militates against the version of the wife is that admittedly regular

correspondence was being exchanged between the wife and her parents. If there had been any demand of dowry, the wife would definitely have written to her parents in this regard and such letters would have been produced on record. The only letter which has been proved on record is an undated letter addressed by the wife to her parents, sister and brother. This letter was produced by the wife before the court at Amritsar in her criminal case. In this letter also there is no allegations of any demand of dowry. However, this letter does show that the relations between the husband and wife were not very happy. In fact this letter shows that after her parents had visited the matrimonial home, her in-laws had started treating her properly. The wife writes that though her husband talks nicely to her and wants to take her out she does not answer him nor goes out with him as advised by the mother of the wife. Obviously the mother had advised the daughter to remain in-different to the husband. The letter is a detailed letter, but there is no mention of any demand of dowry in this letter. In fact the wife has failed to produce on record any cogent, reliable evidence with regard to the demand of dowry The wife in cross examination admits that neither she nor her parents had disclosed to any person that there was any dowry demand prior to 6.5.1996. If any demand of dowry had been made prior to 1995 when the wife left her matrimonial home, the first person to have been

informed would have been RW-2 Jasbir Singh, who had got the marriage fixed between the parties. According to Jasbir Singh appearing as RW-2, on 23.3.1996 he tried for a compromise between the parties at his residence. He states that on this occasion the parents of the wife and her brother and Sukh Dev Singh and his family were present, but Sukh Dev stated that he would not compromise the matter unless he was given Rs.5,00,000/- as dowry. Thus according to him on 23.3.1996 Sukh Dev had demanded dowry. In cross examination he was confronted with his statement recorded by the court at Amritsar in the case filed by the wife against the husband. He admits that in his testimony at Amritsar he had not made any mention about such a dowry demand. It is obvious that if there had been any such demand of dowry then this witness would have disclosed this to the court at Amritsar since the issue of dowry demand was directly the point in issue in the case at Amritsar. More important is the fact that in the court at Amritsar he did not even disclose about the fact that there was any meeting in his house on 23.3.1996. He admits that he had not made any mention about this fact to any person till his statement was recorded before the trial court on 20.9.1999. It is thus very obvious that the story with regard to the meeting on 23.3.1996 and the demand of dowry has been cooked up by the wife at a later stage. Even RW-3

Harbans Singh, father of the wife, does not speak of any dowry demand before 14.1.1996 when he alongwith his family visited the husband's house at Mandi and in the darkness they were refused entry and their articles were thrown out on the ground that they had not brought any money. Thereafter he went to RW-2, Jasbir Singh and tried to get the mediation done. The wife did not deem it fit to examine her mother or her brother or G.S.Randhawa, who are alleged to be present on 14.1.1996.

Lastly, according to the husband, when he was arrested at Mandi in the case registered by his wife, his wife insisted that he should be handcuffed. According to the husband, when he was being taken by the Amritsar police then his wife asked the police why he (husband) was not being handcuffed. She said that she and her family had spent a lot of money in bringing the police from Amritsar and insisted that he should be handcuffed. According to the husband on her insistence the police handcuffed him. This statement of the husband is supported by PW-2, Navtej Singh, who categorically states that when the husband was being taken by the police, the wife had raised her voice and demanded that the police should handcuff the husband since she had brought them to Mandi at great expense. To the similar effect is the statement of PW-3 Iqbal Singh. Their testimony in this regard has not been

shattered in the cross examination. The wife Mandeep Kaur appearing as RW-1 admits that she had come to Mandi alongwith her parents when her husband and her father-in-law were arrested and taken to Amritsar. Harbans Singh (RW-3), father of the wife, also admits that he alongwith his daughter and the police had come to Amritsar. He also admits that the husband and the father were handcuffed. He has, however, denied the suggestion that either he or his daughter had asked the police to handcuff the husband or his father.

By now the law is well settled that the police should not handcuff any person even those involved in grave and serious offences unless there is sufficient material for the police to believe that they may escape. Indeed, the apex court has time and again given directions in this behalf. Admittedly the police handcuffed the husband and his father. They were not charged with murder or rape. They are businessmen and there was no chance of their absconding. From the evidence and material on record it is obvious that the husband and his father were handcuffed at the instance of the wife and her father. This can also be gathered from the fact that the wife and her parents had accompanied the police from Amritsar to Mandi. This by itself shows that she wanted to teach her in-laws a lesson.

In my opinion the instances given above and proved by the husband are sufficient to prove that the wife has treated with the husband with cruelty and entitles him to grant of divorce.

In view of the above discussion the appeal is without any merit and the same is dismissed with no order as to costs.

April 03, 2006(K) (Deepak Gupta), Judge